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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,

USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR<sup>1</sup>  
Case No. BK-S-06-10726-LBR<sup>1</sup>  
Case No. BK-S-06-10727-LBR<sup>2</sup>  
Case No. BK-S-06-10728-LBR<sup>2</sup>  
Case No. BK-S-06-10729-LBR<sup>3</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**MOTION FOR APPROVAL OF  
COMPROMISE SETTLEMENT OF  
CLAIMS AND DIRECTING  
PAYMENT OF PRIORITY CLAIM  
FILED BY LARRY L. AND PATSY  
R. RIEGER REVOCABLE TRUST**

**Hearing Date: December 16, 2010**

**Hearing Time: 9:30 a.m.**

**Estimated Time for Hearing: 10 minutes**

The USACM Liquidating Trust (the "USACM Trust"), by and through its undersigned counsel, and Larry L. and Patsy R. Rieger Revocable Trt Dtd 8/14/91, through its trustees Larry L. and Patsy R. Rieger (collectively "Rieger") file this stipulated motion seeking to settle the Riegers' claims against the estate of USA Commercial Mortgage Company ("USACM") and directing approval and payment of the Rieger's

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.

<sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 21, 2007.

1 priority claim. This Motion is supported by the Declaration of Geoffrey L. Berman filed  
2 herewith. The USACM Trust and the Riegers stipulate:

3 1. Larry L. and Patsy R. Rieger Revocable Trt Dtd 8/14/91 filed Proof of Claim  
4 No. 10725-01739 as an unsecured priority claim in the amount of \$292,852.00.

5 2. Larry L. and Patsy R. Rieger Revocable Trust Dtd 8/14/91 filed Proof of  
6 Claim 10725-01740 in the amount of \$2,016,829.00 as an unsecured non-priority claim.  
7 A portion of this claim has already been disallowed by Order of this Court.

8 3. On March 23, 2007, the USACM Trust filed its Second Omnibus Objection  
9 to Proofs of Claim Asserting Priority Status [DE 3259] objecting to the priority status of  
10 Claim No. 10725-01739 filed by Larry L. and Patsy R. Rieger Revocable Trust Dtd  
11 8/14/91. No order has been entered on this objection, but the Court did deny a motion for  
12 summary judgment filed by the Trust on this claim [DE 5812], which related to the  
13 priority claim. Thus, to prevail on its objection to the priority claim, the Trust would have  
14 to go to trial before this Court.

15 4. Pursuant to the ADR mechanism established under the Debtors' confirmed  
16 Plan, the Trustee, Geoffrey L. Berman and the Trust's attorney Robert M. Charles, Jr. met  
17 with the Riegers on September 30, 2010 (without the assistance of a mediator), to review  
18 their claims in detail and attempt to negotiate a settlement of their claims. In addition to  
19 the substantial documentation the Riegers included with their proof of claim, the Riegers  
20 supplied additional documentation to support their claims at the September 30 meeting.<sup>4</sup>

21 5. The Trustee has considered the Riegers' proofs of claim, the documents  
22 supplied by the Riegers to support their claims and the dialog between the parties during  
23 and immediately following the September 30, 2010 meeting with the Riegers about their  
24 claims. The Trustee believes that a significant portion of the Riegers' claims are valid and  
25 that other portions of the claims have arguable merit. Therefore, the Trustee believes that  
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<sup>4</sup> Declaration of Geoffrey L. Berman in Support of Stipulated Motion for Approval of Compromise Settlement of Claims and Directing Payment of Priority Claim Filed by: Larry L. And Patsy R. Rieger Revocable Trust ("Berman Decl.") ¶ 4.

1 a not insubstantial portion of the Riegers' claims would be allowed were the Trust to  
2 continue to dispute the Riegers' claims and bring the dispute before the Court. Thus,  
3 disputing the remainder of the Riegers' claims would require the Trust to undertake fact  
4 intensive litigation in relation to several different loans. The Trustee believes that the  
5 attorneys' fees and expenses the Trust would incur to challenge the Riegers' claims in  
6 such litigation would likely exceed the monetary value to the Trust beneficiaries ultimately  
7 derived from challenging the Riegers' claims.<sup>5</sup>

8 6. The parties have agreed to settle the Rieger claims and request that the Court  
9 enter an order that:

- 10 • Allows Proof of Claim No. 10725-01739 in the amount of \$292,852.00  
11 (\$32,844 of which is a priority claim) as an unsecured priority claim in the  
12 amount of \$32,844 (the "Priority Claim"), and disallows the balance of  
13 Proof of Claim No. 10725-01739 in its entirety;
- 14 • Upon entry of an order approving the compromise between the parties and  
15 granting this motion, the Court will direct that the Riegers' priority claim in  
16 the amount of \$32,844 be paid.
- 17 • Proof of Claim No. 10725-01740 filed by Larry L. & Patsy R. Rieger  
18 Revocable Tst. Dtd 8/14/91 filed in the amount of \$2,016,829.00 will be  
19 allowed as an unsecured non-priority claim in the amount of \$1,467,156.00.  
20 The balance of Proof of Claim No. 10725-01740 will be disallowed.
- 21 • Based upon the portion of Proof of Claim No. 10725-01740 to be allowed as  
22 an unsecured non-priority claim (\$1,467,156.00), the Trust will make an  
23 immediate 4.92% distribution (\$72,184.08) to the Riegers as their *pro rata*  
24 share of the funds reserved by the Trust from the initial creditor distribution  
25 by the Trust. All other funds reserved for the Riegers' disputed proofs of  
26 claim will be released from the Disputed Claims Reserve and made available

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<sup>5</sup> Berman Decl. ¶ 5.



1 to the Trust for whatever purpose is appropriate in the administration of the  
2 Trust.

- 3 • Each party to bear their own costs and attorneys' fees.

4 7. The Trustee and the Riegers respectfully request that the Court approve their  
5 compromise agreement and grant the Motion. Notice to creditors and a hearing are not  
6 required under the confirmed plan, Bankruptcy Code or Rules.


7  
8 DATED: November 12, 2010.

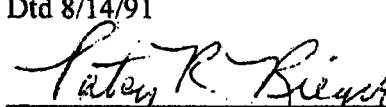
9 LEWIS AND ROCA LLP

10 By: /s/ RC (#6593)

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18 **AGREED, AND APPROVED AS**  
19 **TO FORM AND CONTENT:**

20   
21 Larry L. Rieger, Trustee of  
22 Larry L. and Patsy R. Rieger Revocable Trust  
23 Dtd 8/14/91

24   
25 Patsy R. Rieger, Trustee of  
26 Larry L. and Patsy R. Rieger Revocable Trust  
Dtd 8/14/91 and in her personal capacity

Copy of the foregoing served via e-mail if an e-mail address  
was available, or by first class postage prepaid U.S. Mail to  
All parties in interest listed on the Official Post Effective Date  
Service List on file with this Court on November 16, 2010.

By: S/ Marilyn Schoenike  
Marilyn Schoenike  
Lewis and Roca LLP